



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU SEEKS COMMENT ON EXTENDING WAIVER OF LETTER OF CREDIT RULES FOR CONNECT AMERICA FUND PHASE II AUCTION (AUCTION 903) AND RURAL BROADBAND EXPERIMENTS SUPPORT RECIPIENTS

WC Docket Nos. 10-90, 14-58, 14-259  
AU Docket No. 17-182

Comments Due: August 6, 2021

Reply Comments Due: August 23, 2021

Recognizing the impact of the coronavirus (COVID-19) pandemic on financial markets and the ability of providers to successfully conduct their operations, last summer the Wireline Competition Bureau (Bureau), in conjunction with the Rural Broadband Auctions Task Force and the Office of Economics and Analytics, waived the Commission's letter of credit rules for Connect America Fund Phase II auction (Auction 903) and Rural Broadband Experiments support recipients.<sup>1</sup> These providers were instead directed to comply with the less financially burdensome letter of credit rules established by the Commission for the Rural Digital Opportunity Fund.<sup>2</sup> However, the Bureau limited the waiver until the end of 2021, explaining that it would "reevaluate the scope and impact of this waiver prior to that time to determine whether this relief should be extended."<sup>3</sup> With this Public Notice, the Bureau seeks comment on the merits of extending the waiver of the letter of credit rules for Auction 903 and Rural Broadband Experiments support recipients beyond December 31, 2021.

As an initial matter, we note that the impetus behind granting the waiver—the COVID-19 pandemic and associated financial challenges—remains ongoing, even though the situation in the United States has improved. Section 7402 of the American Rescue Plan defines the COVID-19 emergency period as beginning on January 27, 2020,<sup>4</sup> and ending on the June 30 that first occurs after the date that is one year after the Secretary of Health and Human Services determines that a public health emergency no longer exists.<sup>5</sup> On April 15, 2021, the Secretary of Health and Human Services issued a renewed declaration of a public health emergency due to the COVID-19 pandemic.<sup>6</sup>

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<sup>1</sup> See *Connect America Fund, et al.*, Order, 35 FCC Rcd 6556 (WCB 2020) (*Letter of Credit Waiver Order*).

<sup>2</sup> *Id.* at 6558, para. 7.

<sup>3</sup> *Id.* at 6560, para. 12.

<sup>4</sup> See H.R. 1319, tit. VII, § 7402(d)(5)(A). January 27, 2020 is the date the Secretary of Health and Human Services determined that a public health emergency exists as a result of COVID-19 pursuant to section 319 of the Public Health Service Act. 47 U.S.C. § 247d.

<sup>5</sup> H.R. 1319, tit. VII, § 7402(d)(5)(B); see also 47 U.S.C. § 247d.

Specifically, we seek comment on how has the ongoing nature of the pandemic affected the operations of telecommunications services providers? Several providers previously noted issues with backorders and product unavailability, as well as an inability to obtain permits and other authorizations due to scaled back operations on the part of many municipalities. These concerns “directly impeded the ability of companies to conduct their business, negatively impacting their financials and affecting their long-term creditworthiness.”<sup>7</sup> Have conditions on the ground improved such that these roadblocks to broadband deployment are no longer an issue for providers? Have other barriers to broadband deployment arisen in the past year that have impeded the ability of providers to conduct their business? Commenters should provide specific examples of issues they have faced or are facing that would warrant a continued easing of the letter of credit rules for Auction 903 and Rural Broadband Experiments support recipients.

We also previously observed that the lockdown measures instituted to combat the COVID-19 pandemic resulted in financial institutions imposing more restrictive lending requirements that, in many cases, disproportionately affected small rural providers.<sup>8</sup> As a result, relaxing the letter of credit requirements for Auction 903 and Rural Broadband Experiments support recipients enabled these providers to free up financial resources “to maintain more robust operations during the COVID-19 pandemic or reallocate resources to broadband network deployment at no cost.”<sup>9</sup> We seek comment on whether these same conditions still exist given that lockdown measures have been loosened in many localities. We are particularly interested in whether small, rural providers continue to face the same challenging market conditions that existed last year, including any difficulties in obtaining the requisite financial instruments. Alternatively, have the less restrictive lockdown measures resulted in improved market conditions, such that an extension of the letter of credit waiver is no longer necessary? Are there potential harms to the Universal Service Fund associated with extending the letter of credit waiver?

Additionally, though many Auction 903 support recipients are just now beginning their deployments, all Rural Broadband Experiments support recipients are scheduled to complete their buildouts by the end of 2021. Consequently, we seek comment on whether it is necessary to extend this waiver beyond 2021 for Rural Broadband Experiments support recipients. We note that, even though December 31, 2021 may be the final service milestone for these carriers, they have up to a year to cure any shortfall of that milestone.<sup>10</sup> Given the additional time Rural Broadband Experiments support recipients have to complete their deployment, would extending the letter of credit waiver for these carriers and requiring them to obtain a letter of credit for this “cure year” be warranted? We also note that the Rural Broadband Experiments rules require the Bureau to direct USAC to draw on a carrier’s letter of credit for the recovery of **all support** that has been authorized should an entity not come into compliance during that year cure period.<sup>11</sup> How should we square this requirement with the fact that a Rural Broadband Experiments support recipient that fails to meet its final milestone may no longer be carrying a letter of credit that covers all support it has received? One option would be to decline to extend the waiver beyond 2021 for these support recipients and instead require them to comply with the letter of credit rules initially established for the program moving forward, to the extent they have not completed

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<sup>6</sup> See Renewal of the Determination that a Public Health Emergency Exists Nationwide as the Result of the Continued Consequences of Coronavirus Disease 2019 (COVID-19) Pandemic (Apr. 15, 2021), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-15April2021.aspx>.

<sup>7</sup> See *Letter of Credit Waiver Order*, 35 FCC Rcd at 6558, para. 8.

<sup>8</sup> *Id.* at 6559, para. 9.

<sup>9</sup> *Id.*

<sup>10</sup> See *Connect America Fund; ETC Annual Reports and Certifications*, 29 FCC Rcd 8769, 8799, para. 92 (2014).

<sup>11</sup> *Id.* at 8799-8800, para. 93.

their buildout.<sup>12</sup> As a result, these carriers would be required to obtain a letter of credit “at the total amount of money that has already been disbursed plus the amount of money that is going to be provided for the next disbursement.”<sup>13</sup> We seek comment on this approach, as well as any other proposals advanced by commenters regarding the requirements for Rural Broadband Experiments support recipients.

With regard to the requirements for Auction 903 support recipients, all recipients were required to submit their first annual location report by March 1, 2021, are required to file updated location information by March 1 in each year thereafter, and are required to have built out to 40% of their locations in a state by December 31, 2022.<sup>14</sup> We seek comment on whether the letter of credit requirements for Auction 903 support recipients should be modified in light of reported build out or the absence thereof, whether the recipient completes the first mandatory build out deadline, or any other factors. Should an Auction 903 support recipient who did not file their first location report on time or who fails to file a subsequent location report on time be automatically excluded from any waiver of the Auction 903 letter of credit requirements? Should an Auction 903 recipient be only eligible for a waiver of letter of credit requirements if it has reported a certain percentage of their buildout, e.g., at least 10% by March 1, 2021, and/or at least 20% by March 1, 2022? Should an Auction 903 recipient be ineligible for waiver of the letter of credit requirements if it missed the first mandatory build out deadline, thus suggesting that it is at increased risk of the application of the non-compliance framework? We seek comment on these questions and any other aspects of how the Commission can best address the risk of lessening the Auction 903 letter of credit requirements while incentivizing and facilitating buildout in accord with program requirements.

Finally, we seek comment on other measures related to letters of credit that we could institute to ease the financial burden on support recipients. Given that the pandemic remains ongoing over a year later, are there financial difficulties that providers have faced in the last year that were not known when we granted the initial waiver? Have financial institutions made any changes to their lending practices that have made it more difficult for smaller providers to obtain sufficient funding from these institutions? Are there additional concerns now that may not have been present when we first granted the letter of credit waiver? If so, we encourage commenters to provide specific details about their experiences and the types of financial hardships they have faced during the last year.

*Filing Requirements.* Interested parties may file comments on or before **August 6, 2021** and reply comments on or before **August 23, 2021**.<sup>15</sup> All filings should refer to **WC Docket Nos. 10-90, 14-58, 14-259 and AU Docket No. 17-182**. Comments may be filed by paper or by using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments and replies may be filed electronically using the internet by accessing ECFS: <http://www.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal

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<sup>12</sup> *Id.* at 8791, para. 62.

<sup>13</sup> *Id.*

<sup>14</sup> *Connect America Fund; Connect America Fund Phase II Auction*, Order, 35 FCC Rcd 109, 112-13, paras. 9-11 (WCB 2020) (aligning deployment milestones and reporting obligations for all CAF-II/Auction 903 support recipients).

<sup>15</sup> See 47 CFR § 1.4(j) (filing dates that would otherwise fall on a holiday shall be filed on the next business day).

Service mail. Filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L St, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>16</sup>

*People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530.

*Ex Parte Rules.* Proceedings in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>17</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in these proceedings should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Ian Forbes, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or by email at [Ian.Forbes@fcc.gov](mailto:Ian.Forbes@fcc.gov).

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<sup>16</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020). In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission's electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law.

<sup>17</sup> See 47 CFR §§ 1.1200(a), 1.1206.